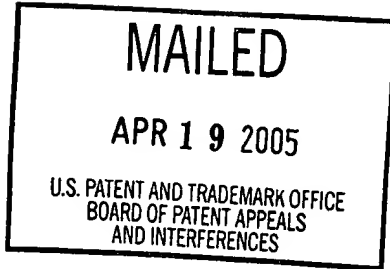


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KAZUHISA MATSUDA

Appeal No. 2005-0677
Application 09/489,473

ON BRIEF

Before OWENS, KRATZ and JEFFREY T. SMITH, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 1-14. Claims 15-33 have been canceled.

THE INVENTION

The appellant claims a suturable adhesion-preventing membrane based on collagen and used for guided tissue regeneration. Claim 1 is illustrative:

1. A suturable adhesion-preventing membrane for guided tissue regeneration comprising at least one non-woven fabric layer made of collagen fibers and at least one sponge layer made of collagen, characterized in that a surface of the membrane is provided with a coating layer of gelatin or hyaluronic acid.

THE REFERENCES

| | | |
|------------------------|-----------|---------------|
| Silver et al. (Silver) | 5,171,273 | Dec. 15, 1992 |
| Light et al. (Light) | 5,514,181 | May 7, 1996 |

THE REJECTION

Claims 1-14 stand rejected under 35 U.S.C. § 103 over Light in view of Silver.

OPINION

We reverse the aforementioned rejection. We need to address only the sole independent claim, i.e., claim 1.

Light discloses "absorbable structures for use as temporary prostheses in the repair of damaged ligaments and/or tendons" (col. 1, lines 4-6). Each bioabsorbable ligament or tendon prosthesis is in the form of a multilayered spiral roll comprising the following spiral layers: a foraminous layer of a synthetic bioabsorbable material, a bioabsorbable film, and a

layer of bioabsorbable sponge (col. 2, lines 46-50). "The bioabsorbable film is preferably formed by drying an aqueous solution or suspension comprising a biopolymer such as collagen, a glycosaminoglycan such as hyaluronic acid, or the like" (col. 3, lines 28-31). "The compositions of the foraminous layer and the bioabsorbable film may be the same or different" (col. 4, lines 64-65), and "[p]referably the foraminous layer is actually coated with the bioabsorbable film" (col. 3, lines 46-47). "Preferably the foraminous layer is a woven, non-woven or knitted mesh" (col. 2, lines 66-67). The sponge preferably is made of collagen (col. 4, lines 18-20).

The examiner relies upon Silver only for a disclosure of synthetic collagen fibers having a particular diameter (answer, page 3).

The appellant argues that Light's "laminate is not within the scope of the claims of the application because the only description in Light of the formation of the sponge layer is that the sponge layer is formed after the laminate of the foraminous layer of bioabsorbable material and bioabsorbable film coated with the aqueous gel is rolled up into a spiral roll. (See Col. 4, lines 49-51 ('rolling up the laminate and the gel layer into a spiral roll, followed by drying the gel to form a layer of

bioabsorbable sponge') and the examples)" (brief, pages 11-12).
The examiner does not respond to that argument (answer, page 5).

Light discloses that the method for making his bioabsorbable prosthesis for use in surgical repair of damaged ligaments or tendons comprises "providing a laminate of a foraminous layer of bioabsorbable material and a bioabsorbable film; coating the laminate with a layer of an aqueous gel comprising a bioabsorbable polymer; rolling up the laminate and the gel layer into a spiral roll, followed by drying the gel to form a layer of bioabsorbable sponge" (col. 4, lines 46-52). Thus, prior to Light's laminate being rolled up into a spiral roll there is no sponge. After the laminate is dried there is a layer of bioabsorbable sponge, but the laminate is in the form of a roll instead of a membrane.¹ The examiner has not pointed to any disclosure where Light indicates that after the sponge layer has formed, the spiral roll laminate can be unrolled to form a membrane.

¹ A membrane is "[a] thin, enveloping or lining substance, which divides a space or an organ." *Hackh's Chemical Dictionary* 414 (McGraw-Hill, 4th ed. 1969).




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We therefore conclude that the examiner has not carried the burden of establishing a *prima facie* case of obviousness of the appellant's claimed invention.

DECISION

The rejection of claims 1-14 under 35 U.S.C. § 103 over Light in view of Silver is reversed.

REVERSED

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|---|---|-----------------|
|  |) | |
| TERRY J. OWENS |) | |
| Administrative Patent Judge |) | |
| |) | |
|  |) | |
| PETER F. KRATZ |) | BOARD OF PATENT |
| Administrative Patent Judge |) | APPEALS AND |
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|  |) | INTERFERENCES |
| JEFFREY T. SMITH |) | |
| Administrative Patent Judge |) | |

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Kubovcik & Kubovcik
Suite 710
900 17th Street NW
Washington, DC 20006